

0009

From: Priscilla Burton
To: Alder, Steve; Haddock, Daron; Smith, Jim
CC: White, Susan
Date: 4/29/2009 8:24 AM
Subject: Re: Consumers Road

Internal
C/007/0033
#2966
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The Wildcat Task 2966 Significant Revision changes the permit area boundary. The expansion incorporates occupied dwellings and a public road. Therefore, the expansion places coal mining and reclamation activity within 300 feet of occupied dwellings and within 100 feet of public roads. As a result, in accordance with R645-103-234.200, the Division is required to provide an opportunity for a public hearing.

MRP Section R645-301-115.300 states that the permit area is not within 100 feet of a public road. However, Plate 16 clearly indicates that revised permit boundary includes the Consumers Road [county], and the Trestle public road. The Wildcat Task 2966 Significant Revision changes the permit area boundary. The expansion incorporates occupied dwellings and a public road. Therefore, the expansion places coal mining and reclamation activity within 300 feet of occupied dwellings and within 100 feet of public roads. As a result, in accordance with R645-103-234.200, the Division is required to provide an opportunity for a public hearing. . The narrative suggests in Section R645-301-114 that the SMCRA permit area boundary be enlarged to include these areas to coincide with the BLM right of way that was recently "squared up." However, permit area is a defined term under SMCRA and means "the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit...(R645-100-2000)" SMCRA clearly limits coal mining and reclamation activity within 100 feet of a public road and within 300 feet of an occupied dwelling. Activity within 100 feet of a public road is limited to ingress and egress to the coal mining and reclamation site. Activity within 300 feet of any occupied dwelling may only proceed upon written waiver from the owners of the dwelling.

Plate 1A shows coal mining and reclamation activities within 100 feet of the Trestle public road. Plate 1A shows coal mining and reclamation activities are shown within 300 feet of the Hidden Splendor shop facilities and includes the facilities within the permit area. The Permittee has two choices, either create a permit area boundary that is unique from the BLM right of way, such that it allows for expansion, but does not include occupied dwellings or in accordance with R645-103-235, the Permittee must obtain a waiver from the owners of the buildings within the permit area allowing coal mining and reclamation activity within 300 feet of the occupied buildings. In either case, in accordance with R645-103-234, the Permittee must obtain the necessary approvals from the road authority for construction of sediment ponds within 100 feet of the Trestle public road and the Division must provide an opportunity for a public hearing.

>>> Steve Alder Wednesday, April 29, 2009 8:16 AM >>>

I am not sure of the facts. I just put in my 'two bits' on the ambiguity of the law. What did Priscilla say and what are the reasons for concern?